

REMARKS

The present Amendment is in response to the Official Action mailed July 24, 2008. Because of the finality of the Action, the present Amendment is being submitted along with a Request for Continued Examination. In light of this, Applicants respectfully request that the present communication be entered and considered by the Examiner.

In this Amendment, claims 1 and 8 have been amended and claims 19-22 are new. Claims 2 and 4 have been previously canceled. Therefore, claims 1, 3, and 8-22 remain pending in the present case. The following sets forth Applicants' remarks pertaining to the currently pending claims and the outstanding Action.

In the Action, the Examiner rejected previously presented claims 1, 3, and 5-18 under 35 U.S.C. § 103(a) as being obvious over the combination of U.S. Patent No. 6,113,637 to Gill *et al.* ("*Gill*") and U.S. Patent No. 6,139,550 to Michelson ("*Michelson*"). Essentially, the Examiner asserted that *Gill* teaches each and every one of the limitations of those previously presented claims, save for a retaining device having a flexible and concave shaped head flange. To support this contention, the Examiner cited *Michelson*, and noted that it would have been obvious to one having ordinary skill in the art at the time of the present invention to have provided the device of *Gill* with a retaining device having a convex, flexible head, in view of *Michelson*. The Examiner further stated that such would have been done in order to assist the locking device in riding over the top of the bone screw head and facilitate the surgical procedure. Applicants respectfully disagree with the Examiner's assertions, especially in light of the above-made amendments and additions to the currently pending claims.

The present case has been the subject of several previous Actions, to which several different responses were filed. Prior

to responding to the Action received prior to the outstanding Action, Applicants' undersigned counsel conducted a telephone interview with the Examiner. As is acknowledged by the Examiner in the Response to Arguments section of the outstanding Action, the claims were amended to recite further limitations agreed upon in such interview. (Applicants believe the Examiner to have mistakenly stated that the claims were not amended to recite such limitations.) However, later in that section, the Examiner noted that upon further consideration of the application in its entirety, additional limitations to the currently pending claims should be added. Specifically, while it was agreed upon in the previous interview that requiring in the claims that the stress relief areas be completely contained within or bounded by a solid portion of the head flange would overcome the rejections in view of *Gill* and *Michelson*, the Examiner asserted that such limitation would need to be amended to require that the relief portions be positively bounded on all lateral sides. In the present amendment, Applicants have amended independent claim 1 to require that the at least one stress relief area be "bounded on all lateral sides by the solid portion." Given the Examiner's indications in the pending Action, Applicants respectfully submit that such claim, as amended, overcomes the rejections in view of *Gill* and *Michelson*. Furthermore, dependent claims 3, 5-7, and 9-13, which properly depend from independent claim 1 or an intervening claim, also overcome the combination of such references.

Likewise, independent claim 8 has been amended to include similar limitations. Although such claim is directed to a method, and although the Examiner indicated in the Action that structural limitations in such method claim have not been given weight as far as they do not affect the steps of the method in a manipulative sense, Applicants nonetheless respectfully submit that such claim overcomes the rejections in view of *Gill* and

*Michelson*. Simply put, the inserting and tightening steps recited in independent claim 8 cannot be performed even when combining the structure taught in *Gill* and *Michelson*. Therefore, Applicants respectfully submit that the structural limitations, including those added in the present amendment, do in fact affect the steps of the method. As such, Applicants believe independent claim 8, as amended, to overcome the rejection in view of such references. Furthermore, dependent claims 16-18 also overcome such rejections, based upon their proper dependence from independent claim 8, or an intervening claim.

Finally, in the aforementioned Response to Arguments section set forth in the Action, the Examiner also noted that the shape of the relief portions (e.g., circular) could be claimed in order to overcome the outstanding rejections. New independent claim 19 and new claims 21 and 22 depending therefrom have been added in the present response. Independent claim 19 requires that the head flange have at least one circular stress relief area. Applicants respectfully submit that none of the prior art of record, most notably *Michelson*, teaches such a stress relief construction, as is alluded to by the Examiner in the outstanding action. Therefore, Applicants respectfully submit that independent claim 19, and dependent claims 21 and 22 are neither anticipated nor obviated by the cited prior art.

Therefore, in light of all of the above, Applicants respectfully request allowance of each and every one of the currently pending claims. Although certain of the dependent claims and their limitations were not specifically discussed herein, Applicants note that such may include subject matter even more clearly not taught by the prior art of record. Applicants reserve the right to argue any of such subject matter at a later date, if necessary.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 26, 2009

Respectfully submitted,

By 

Kevin M. Koon

Registration No.: 54,230

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants